LIBRARY
SUPREME COURT, U. S.

FILED
AUG 25 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75–136

PEOPLE OF THE STATE OF CALIFORNIA EX REL. EVELLE J. YOUNGER, ATTORNEY GENERAL,
Petitioner,

v.

TAHOE REGIONAL PLANNING AGENCY, TED JENNINGS AND OLIVER KAHLE, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE STATE OF NEVADA AS AMICUS CURIAE

ROBERT LIST
Attorney General of Nevada

JAMES H. THOMPSON
Chief Deputy Attorney General
State of Nevada
Supreme Court Building
Capitol Complex
Carson City, Nevada 89710
Attorneys for Amicus Curiae.

BLEED THROUGH

SUBJECT INDEX

PAGE

INTEREST OF AMICUS CURIAE 1

ARGUMENT—

I. The Court of Appeals' holding that the dual majority and 60 day final action provisions of the compact are to be given their plain meaning is unassailable in law and reason 2

II. The Court of Apepals' opinion affords sufficient direction to the Tahoe Regional Planning Agency and compacting states in carrying out the compact 3

III. This is not a case of a party state to a compact refusing to carry out its compact obligations 4

IV. Contrary to California's assertion this case does not require definition of sovereign interests never before passed upon by this court 6

V. This court should refuse to lend its aid to rewriting the compact and should defer to the state legislatures and the Congress 7

CONCLUSION 8

CASES

Ca

Pe

Hi

De

Dy

Ke

MISC

Co

TABLE OF AUTHORITIES CITED

PAGE

inetti v. United States, 242 U.S. 470, 485 3

v. Tennessee-Missouri Bridge Comm., 359 U.S. 275, 279 5

lelider v. La Plata Co., 304 U.S. 92 4

ware River Bridge Comm. v. Colburn, 310 U.S. 419 4

v. Sims, 341 U.S. 22 ..... 4, 6

ucky v. Indiana, 281 U.S. 163, 177 ..... 5, 6

LLANEOUS

pact

rticle III(g) 2, 3, 5, 7, 8

rticle VI(k) 2, 3, 5, 7

rticle VIII(g) 7

BLEED THROUGH

IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75–136

PEOPLE OF THE STATE OF CALIFORNIA EX REL.
EVELLE J. YOUNGER, ATTORNEY GENERAL,
Petitioner,

v.

TAHOE REGIONAL PLANNING AGENCY, TED JENNINGS
AND OLIVER KAHLE, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE STATE OF NEVADA AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The extent and nature of sovereignty surrendered by Califronia and Nevada is directly at issue in this litigation. Nevada has a very real interest, as a sovereign state and as one of the contracting parties in the outcome of this litigation.[1] Indeed, Nevada has the identical interest insofar as the extent of sovereignty surrendered to the Tahoe Regional Planning Agency is drawn into this question. To the extent the bi-state agency's powers and the manner

---

[1]Although not a party to the proceedings below Nevada did file an *amicus* brief with the Ninth Circuit in support of the District Court's decision.

of its exercising control might be enlarged—the sovereignty of Nevada is thus diminished.

ARGUMENT

I.

THE COURT OF APPEALS' HOLDING THAT THE DUAL MAJORITY AND 60 DAY FINAL ACTION PROVISIONS OF THE COMPACT ARE TO BE GIVEN THEIR PLAIN MEANING IS UNASSAILABLE IN LAW AND REASON.

From the inception of this litigation, California has maintained, without demonstrating any legal basis therefor, the position that both states had abdicated their sovereignty over control of land use to the Tahoe Regional Planning Agency (hereinafter called TRPA). Having lightly passed over consideration of relinquishment of sovereignty, California next proceeds to the position that no lake basin project or development can take place if a majority of one state's delegation rejects it because otherwise the goals of preserving the ecological balance of Lake Tahoe might be compromised. In other words, California contends that unless the Compact is construed as creating a super powerful bi-state agency the Tahoe Regional Planning Agency will be less efficacious in treating the ecological ills of the Lake Basin. California conveniently ignores the structure of the TRPA as it was established by the Compact. Her position completely ignores the dual majority provision written into the Compact at Nevada's insistance. It further ignores the requirement of Article VI(k) that TRPA take final action to approve, modify or reject a project within 60 days.

California failed to convince the District Court and Court of Appeals to read Article III(g) and VI(k) as though agency action is taken even though the Agency fails to approve, to modify, or to reject the project.

BLEED THROUGH

District Judge Thompson stated (Petitioner's Brief, Appendix A, Page 4), "I don't see anything equivocal, ambiguous or uncertain about that provision [III(g)]. It is very specific. It provides, in clear and unambiguous terms, that a majority of the quorum present from each state has to agree before action can be taken." The District Judge also ruled that VI(k) was not simply a time limitation, but that this Article also specifies the review powers of the Agency and observed (Petitioner's Brief, Appendix A, Page 5), "The stalemate in the Agency because of the Charter provision that there must be a majority vote from the quorum present from each state for action to be taken constitutes no action; it is not either approval, rejection or modification."

The Ninth Circuit also rejected California's view that the provisions are ambiguous saying its argument "simply does not take into account the plain meaning of the compact, and the intent of its architects." (Petitioners' Brief, Appendix B, Page 15.)

There is ample grounds for arguing that these provisions are not in need of construction in the first instance since their plain meaning is immediate and obvious. Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise. *Caminetti v. United States*, 242 U.S. 470, 485.

II.

THE COURT OF APPEALS OPINION AFFORDS SUFFICIENT DIRECTION TO THE TAHOE REGIONAL PLANNING AGENCY AND COMPACTING STATES IN CARRYING OUT THE COMPACT.

California argues that certiorari should be granted so that this Court may provide direction to California and Nevada and to other states sharing common boundaries bisecting natural resource areas. (Petitioner's Brief, Page 18.)

Nevada submits that the Court of Appeals opinion provides a

clear and certain guideline to the Tahoe Regional Planning Agency and to Nevada and California. The Court of Appeals noted (Petitioners' Brief, Appendix B, Page 17) that the Tahoe Regional Planning Agency construed its review powers in its land use regulations the same as the Court of Appeals construed them. The Tahoe Regional Planning Agency cannot be in a quandary as to its procedures and powers. The Ninth Circuit has agreed with the Agency on its powers and regulations.

The Court mandate to the Agency is simply if it wants to take review action a majority of each state's membership must vote to approve, to modify, or to reject a project within 60 days or such project will be declared approved.

The Ninth Circuit's opinion serves as a clear admonition to other states contemplating bi-state cooperation that failure of the states to relinquish fully its police power over land use planning to a bi-state agency will result in a less powerful "anti-growth measure."

There is no need to involve this Court in what is an obvious lesson to be learned from two states who were extremely reluctant to relinquish fully their sovereignty over a portion of their territory.

III.

THIS IS NOT A CASE OF A PARTY STATE TO A COMPACT REFUSING TO CARRY OUT ITS COMPACT OBLIGATIONS.

Historically, this Court has exercised its original jurisdiction in disputes between compacting states over fulfillment of their compact obligations. Ordinarily, certiorari has been granted only in interstate compact litigation *not* between states[2] to review decisions

[2]*Hindelider v. La Plata Co.*, 304 U.S. 92, *Delaware River Bridge Comm., v. Colburn*, 310 U.S. 419; *Dyer v. Sims*, 341 U.S. 22.

BLEED THROUGH

of the highest state court since construction of a compact is ultimately one for the federal courts. *Petty v. Tennessee-Missouri Bridge Comm.*, 359 U.S. 275, 279.

But unlike such cases, the present litigation does not involve a "federal title, right, privilege or immunity, which when specially set up and claimed in a state court" may be reviewed by this Court on certiorari. This case arose in the federal district court and thereafter was appealed to the Ninth Circuit Court of Appeals. Both federal courts have exhaustively considered the questioned compact provisions and both have rather conclusively rendered the only available construction in light of their plain meaning.

This is not a case where both compacting states are parties before this Court for determination of a controversy and this Court must therefore pass upon every question essential to such a determination. *Kentucky v. Indiana*, 281 U.S. 163, 177.

Nor is this a case where Nevada or California has attempted, as West Virginia attempted in the concurring words of Mr. Justice Jackson "raise an issue . . . decide it, and release herself from an interstate obligation." *Dyer v. Sims*, 341 U.S. 22, 35. Nor does the present litigation involve a recalcitrant state seeking to renege on its compact obligations, or by subterfuge, avoid them.

The present litigation is a dispute between one compacting state and two owners of property within the other compacting state.

Although Nevada does disagree with California's interpretation of Articles III(g) and VI(k), such disagreement has not led to any disruption in the Agency's operations and both states' membership delegations continue to act as the governing body.

Even if this case were to be viewed as a controversy between the two states, and Nevada respectfully submits that it is not, then in such event, certiorari should also be denied and the original jurisdiction of this Court be invoked if, and when, a controversy

disruptive and destructive of the compact should arise between California and Nevada.

IV.

CONTRARY TO CALIFORNIA'S ASSERTION THIS CASE DOES NOT REQUIRE DEFINITION OF SOVEREIGN INTERESTS NEVER BEFORE PASSED UPON BY THIS COURT.

California asserts (Petitioner's Brief, Page 18), that since this is the first time a state has attempted to stop construction in a neighboring state "pursuant to a bi-state compact" that a definition of sovereign interests is involved which this Court has never passed on and therefore should do so. While this may be the first case involving construction of buildings in a neighboring compact state, it is not the first time a state has sought to void or hinder a compact's operation in the other compact states. *Kentucky v. Indiana, supra; Dyer v. Sims, supra.*

In any event, there is no sovereign interest which needs to be defined. California has no sovereign interest in Nevada's territory beyond that granted to the Tahoe Regional Planning Agency. California and Nevada did not relinquish sovereignty to each other at all. On the contrary, the Tahoe Regional Planning Agency, as the Court of Appeals noted, (Petitioner's brief, Appendix B, Page 16) is *sui generis.* It is the Tahoe Regional Planning Agency that exercises whatever sovereignty that California and Nevada relinquished to it. California has no sovereign interest in Nevada at all and consequently none to be defined.

California further poses the lurid spectacle of a strip mining project being approved under the Court of Appeals holding, and argues that the Court of Appeals failed to realize that its decision necessarily allows one state's delegation to be overruled by the other. This is true. But the situation would be no different if California's view had been adopted by the Court of Appeals. That is,

BLEED THROUGH

California's delegation would have overruled the Nevada delegation's decision to build the hotels.

California further confuses the matter when it urges (Petitioner's Brief, Page 9), that the Court of Appeals reading of the Compact "is to return the region to the pre-compact era when each state would allow whatever development it wished without considering the concerns of the other state." But California, on the following page, goes on to state that under the Court of Appeals decision, "each [state] can no longer even control development within its own border."

It is therefore not altogether surprising that the Court of Appeals turned away from these inconsistent blandishments and looked at the plain meaning of the words "action", "majority" and "final action".

V.

THIS COURT SHOULD REFUSE TO LEND ITS AID TO REWRITING THE COMPACT AND SHOULD DEFER TO THE STATE LEGISLATURES AND THE CONGRESS.

California's petition, bared to its essentials, is really a plea that the Compact be interpreted as a complete surrender of sovereignty to the Tahoe Regional Planning Agency; and that the Agency be deemed a super powerful bi-state Agency. California says that any other construction of Articles III(g) and VI(k) would frustrate the stated policies of the Compact and cites Article VIII(a) which provides that the Compact provisions shall be reasonably and liberally construed to effectuate its purposes.

Of course, a reasonable and liberal construction is to be preferred whenever a Compact provision contains ambiguous words or uses words in an ambiguous manner. In effect, California asked the Court of Appeals, and now asks this Court, to read out of Article III(g) the words "from each state", "members present

representing each state"; and "to take action." California also asks that the requirement of Article VI(k) that the Agency must take final action either to approve, to modify, or to reject within 60 days be read out of the Compact. This the Court of Appeals declined to do and instead admonished California (Petitioners' Brief, Appendix B, Page 19) that its remedy lies solely with the legislatures of the compacting parties.[3]

[3]The 1975 Nevada Legislature after extended public hearings, refused to enact S.B. 254 which would have amended III(g) and VI(k) to remove the dual majority and 60 day final action provisions.

CONCLUSION

For the foregoing reasons, in addition to the reasons stated by the Respondents, the petition for certiorari should be denied.

DATED: Carson City, Nevada 89710, Capitol Complex; August 15, 1975.

ROBERT LIST
Attorney General of Nevada

JAMES H. THOMPSON
Chief Deputy Attorney General

Attorneys for the State of Nevada
as Amicus Curiae

BLEED THROUGH